

## UNITED STATES DISTRICT COURT

for the

Western District of New York

United States of America

v.

LUIS A. DIAZ-AGRAMONTE

Date of Original Judgment:

10/19/11

Date of Previous Amended Judgment:

(Use Date of Last Amended Judgment if Any)

Case No: 6:06-CR-6061-002

USM No: 60486-054

pro se

Defendant's Attorney



### ORDER REGARDING MOTION FOR SENTENCE REDUCTION PURSUANT TO 18 U.S.C. § 3582(c)(2)

Upon motion of ☒ the defendant ☐ the Director of the Bureau of Prisons ☐ the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion, and taking into account the policy statement set forth at USSG §1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable,

**IT IS ORDERED** that the motion is:

☒ DENIED. ☐ GRANTED and the defendant's previously imposed sentence of imprisonment (as reflected in the last judgment issued) of  months is reduced to .

The Court exercises its discretion pursuant to *Freeman v. United States*, 131 S. Ct. 2685, 2694 (2001) to deny defendant's motion for reduction. This Court's discretion is set forth in Section 3582(c)(2) itself, which provides that "the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission" (emphasis added). Therefore, while the amendment specified in USSG §1B1.10 may authorize this Court to reduce a sentence pursuant to 18 U.S.C. §3582(c)(2), it does not require it.

In this case, the Court once again exercises its discretion to deny defendant's second motion for reduction. Pursuant to USSG § 1B1.10(a)(2)(A), a reduction of the defendant's term of imprisonment is not consistent with this policy statement and therefore is not authorized under 18 U.S.C. § 3582(c) if none of the amendments listed are applicable to the defendant.

Defendant pled guilty to Count 1 of the Indictment which charged Conspiracy to Distribute and Possess with Intent to Distribute 5 Kilograms or More of Cocaine and 50 Grams or More of Cocaine Base in violation of Title 21 U.S.C. § 846. Pursuant to the presentence report, §2D1.1(d)(1) (cross reference) applied as a victim was killed under circumstances that would constitute murder under Title 18 U.S.C. § 1111 and that § 2A1.1 (First Degree Murder) therefore applied to the offense of conviction. As such, the defendant is not eligible for a reduction

Except as otherwise provided, all provisions of the judgment dated  shall remain in effect.

**IT IS SO ORDERED.**

Order Date: 8/11/2016

Effective Date:   
(if different from order date)

Hon. Charles J. Siragusa, United States District Judge

Printed name and title